

AMENDED IN SENATE JUNE 4, 2003

AMENDED IN SENATE MAY 7, 2003

SENATE BILL

No. 923

Introduced by Senator Sher

February 21, 2003

An act to amend Sections 5650, 13261, and Section 12011 of the Fish and Game Code, and to amend Sections ~~13265~~ 13261, 13265, and 13269 of the Water Code, relating to water; ~~and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 923, as amended, Sher. Water quality.

(1) Existing law makes it a crime for a person to deposit in, permit to pass into, or place where it can pass into the waters of this state any of specified substances, including any petroleum, acid, coal or oil tar, lampblack, aniline, asphalt, bitumen, or residuary product of petroleum, or carbonaceous material or substance. Existing law excepts from the application of that prohibition a discharge or release that is expressly authorized pursuant to and in compliance with the terms of a waste discharge requirement or a waiver, or that is expressly authorized pursuant to and in compliance with the terms and conditions of a federal permit for which the State Water Resources Control Board or a regional water quality control board has, after a public hearing, issued a water quality certification.

This bill would delete a discharge or release that is expressly authorized pursuant to a waiver from that exception. By expanding the scope of a crime, this bill would impose a state-mandated local program.

~~(2) Existing law continuously appropriates the money in the Fish and Game Preservation Fund to the Department of Fish and Game to pay expenses incurred in carrying out the Fish and Game Code.~~

~~By imposing new duties on the department, this bill would make an appropriation.~~

~~(3) The Porter-Cologne Water Quality Control Act provides that any person failing to furnish a report or pay a fee, or discharging waste in violation of certain waste discharge requirements, after that person has been requested to furnish a report or pay a fee or notified in writing by a California regional water quality control board about that violation, is guilty of a misdemeanor.~~

~~This bill would delete the request and notification requirements. By expanding the scope of a crime, this bill would impose a state-mandated local program.~~

~~(4)~~

~~(2) The act provides that a regional board may waive certain waste discharge requirements for specific discharges or specific types of discharges if the waiver is not against the public interest. The act provides that the waivers are subject to conditions.~~

~~This bill, instead, would provide that the state board or a regional board may waive those waste discharge requirements if certain requirements are met. The bill would require the conditions of the waivers to include the payment of an annual fee and the performance of monitoring duties.~~

~~(5)~~

~~(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~Vote: majority. Appropriation: ~~yes~~ no. Fiscal committee: yes. State-mandated local program: yes.~~

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 5650 of the Fish and Game Code is~~
2 ~~amended to read:~~

1 ~~5650. (a) Except as provided in subdivision (b), it is unlawful~~
2 ~~to deposit in, permit to pass into, or place where it can pass into the~~
3 ~~waters of this state any of the following:~~

4 ~~(1) Any petroleum, acid, coal or oil tar, lampblack, aniline,~~
5 ~~asphalt, bitumen, or residuary product of petroleum, or~~
6 ~~carbonaceous material or substance.~~

7 ~~(2) Any refuse, liquid or solid, from any refinery, gas house,~~
8 ~~tannery, distillery, chemical works, mill, or factory of any kind.~~

9 ~~(3) Any sawdust, shavings, slabs, or edgings.~~

10 ~~(4) Any factory refuse, lime, or slag.~~

11 ~~(5) Any cocculus indicus.~~

12 ~~(6) Any substance or material deleterious to fish, plant life, or~~
13 ~~bird life.~~

14 ~~(b) This section does not apply to a discharge or a release that~~
15 ~~is expressly authorized pursuant to, and in compliance with the~~
16 ~~terms and conditions of, either of the following:~~

17 ~~(1) A waste discharge requirement prescribed pursuant to~~
18 ~~Section 13263 of the Water Code by the State Water Resources~~
19 ~~Control Board or a regional water quality control board after a~~
20 ~~public hearing.~~

21 ~~(2) A federal permit for which the State Water Resources~~
22 ~~Control Board or a regional water quality control board has issued,~~
23 ~~after a public hearing, a water quality certification pursuant to~~
24 ~~Section 13160 of the Water Code.~~

25 ~~This section does not confer additional authority on the State~~
26 ~~Water Resources Control Board, a regional water quality control~~
27 ~~board, or any other entity.~~

28 ~~(c) It shall be an affirmative defense to a violation of this~~
29 ~~section if the defendant proves, by a preponderance of the~~
30 ~~evidence, all of the following:~~

31 ~~(1) The defendant complied with all applicable state and~~
32 ~~federal laws and regulations requiring that the discharge or release~~
33 ~~be reported to a government agency.~~

34 ~~(2) The substance or material did not enter the waters of the~~
35 ~~state or a storm drain that discharges into the waters of the state.~~

36 ~~(3) The defendant took reasonable and appropriate measures to~~
37 ~~effectively mitigate the discharge or release in a timely manner.~~

38 ~~(d) The affirmative defense in subdivision (c) does not apply~~
39 ~~and may not be raised in an action for civil penalties or injunctive~~
40 ~~relief pursuant to Section 5650.1.~~

~~(c) The affirmative defense in subdivision (c) does not apply and may not be raised by any defendant who has on two prior occasions in the preceding five years, in any combination within the same county in which the case is prosecuted, either pleaded nolo contendere, been convicted of a violation of this section, or suffered a judgment for a violation of this section or Section 5650.1. This subdivision shall apply only to cases filed on or after January 1, 1997.~~

~~(f) The affirmative defense in subdivision (c) does not apply and may not be raised by the defendant in any case in which a district attorney, city attorney, or Attorney General alleges, and the court finds, that the defendant acted willfully.~~

~~SEC. 2.—~~

SECTION 1. Section 12011 of the Fish and Game Code is amended to read:

12011. (a) In addition to the penalty provided in paragraph (4) of subdivision (b) of Section 12002, any person convicted of a violation of subdivision (a) of Section 5650 is subject to an additional fine of all of the following:

(1) Not more than ten dollars (\$10) for each gallon or pound of material discharged. The amount of the fine shall be reduced for every gallon or pound of the illegally discharged material that is recovered and properly disposed of by the responsible party.

(2) An amount equal to the reasonable costs incurred by the state or local agency for cleanup and abatement and to fully mitigate all actual damages to fish, plant, bird, or animal life and habitat.

(3) Where the state or local agency is required to undertake cleanup or remedial action because the responsible person refuses or is unable to fully cleanup the discharge, an amount equal to the reasonable costs incurred by the state or local agency, in addition to the amount of funds, if any, expended by the responsible person, in cleaning up the illegally discharged material or abating its effects, or both cleaning up and abating those effects.

(b) Notwithstanding the jurisdiction of the department over illegal discharges and pollution as provided in Section 5650, the fines specified in this section do not apply to discharges in compliance with a national pollution discharge elimination system permit or a state or regional board waste discharge permit.

~~SEC. 3.—~~

1 *SEC. 2.* Section 13261 of the Water Code is amended to read:

2 13261. (a) Any person failing to furnish a report or pay a fee
3 under Section 13260 is guilty of a misdemeanor and may be liable
4 civilly in accordance with subdivision (b).

5 (b) (1) Civil liability may be administratively imposed by a
6 regional board or the state board in accordance with Article 2.5
7 (commencing with Section 13323) of Chapter 5 for a violation of
8 subdivision (a) in an amount that may not exceed one thousand
9 dollars (\$1,000) for each day in which the violation occurs. For
10 purposes of this section only, the state board shall have the same
11 authority and shall follow the same procedures as set forth in
12 Article 2.5 (commencing with Section 13323) of Chapter 5, except
13 that the executive director shall issue the complaint with review by
14 the state board. Civil liability may not be imposed by the regional
15 board pursuant to this section if the state board has imposed
16 liability against the same person for the same violation.

17 (2) Civil liability may be imposed by the superior court in
18 accordance with Article 5 (commencing with Section 13350) and
19 Article 6 (commencing with Section 13360) of Chapter 5 for a
20 violation of subdivision (a) in an amount that may not exceed five
21 thousand dollars (\$5,000) for each day the violation occurs.

22 (c) Any person discharging or proposing to discharge
23 hazardous waste, as defined in Section 25117 of the Health and
24 Safety Code, who knowingly furnishes a false report under Section
25 13260, or who either willfully fails to furnish a report or willfully
26 withholds material information under Section 13260 despite
27 actual knowledge of that requirement, may be liable in accordance
28 with subdivision (d) and is guilty of a misdemeanor. This
29 subdivision does not apply to any waste discharge that is subject
30 to Chapter 5.5 (commencing with Section 13370).

31 (d) (1) Civil liability may be administratively imposed by a
32 regional board in accordance with Article 2.5 (commencing with
33 Section 13323) of Chapter 5 for a violation of subdivision (c) in
34 an amount that may not exceed five thousand dollars (\$5,000) for
35 each day the violation occurs.

36 (2) Civil liability may be imposed by the superior court in
37 accordance with Article 5 (commencing with Section 13350) and
38 Article 6 (commencing with Section 13360) of Chapter 5 for a
39 violation of subdivision (c) in an amount that may not exceed
40 twenty-five thousand dollars (\$25,000).

~~SEC. 4.—~~

SEC. 3. Section 13265 of the Water Code is amended to read:

13265. (a) Any person discharging waste in violation of Section 13264 is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b). Each day of such discharge shall constitute a separate offense.

(b) (1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

(2) Civil liability may be imposed by the superior court in accordance with Article 5 (commencing with Section 13350) and Article 6 (commencing with Section 13360) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed five thousand dollars (\$5,000) for each day in which the violation occurs.

(c) (1) Any person discharging hazardous waste, as defined in Section 25117 of the Health and Safety Code, in violation of Section 13264 is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (d). That liability shall not be imposed if the discharger is not negligent and immediately files a report of the discharge with the board, or if the regional board determines that the violation of Section 13264 was insubstantial.

(2) This subdivision does not apply to any waste discharge that is subject to Chapter 5.5 (commencing with Section 13370).

(d) (1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (c) in an amount which shall not exceed five thousand dollars (\$5,000) for each day in which the violation occurs.

(2) Civil liability may be imposed by the superior court in accordance with Article 5 (commencing with Section 13350) and Article 6 (commencing with Section 13360) of Chapter 5 for a violation of subdivision (c) in an amount which shall not exceed twenty-five thousand dollars (\$25,000) for each day in which the violation occurs.

~~SEC. 5.—~~

SEC. 4. Section 13269 of the Water Code is amended to read:

1 13269. (a) (1) On and after January 1, 2000, the provisions
2 of subdivisions (a) and (c) of Section 13260, subdivision (a) of
3 Section 13263, or subdivision (a) of Section 13264 may be waived
4 by the state board or a regional board as to a specific discharge or
5 a specific type of discharge if the state board or a regional board
6 determines that the discharge or type of discharge meets all of the
7 following requirements:

8 (A) Is consistent with any applicable state or regional water
9 quality control plan.

10 (B) Will not cause or contribute to a violation of any applicable
11 water quality objective.

12 ~~(C) Does not include any priority toxic pollutant identified~~
13 ~~pursuant to Section 307 of the Clean Water Act (33 U.S.C. Sec.~~
14 ~~1317).~~

15 ~~(D) Does not include any chemical listed pursuant to Section~~
16 ~~25249.8 of the Health and Safety Code.~~

17 (C) *Does not contain quantities of either of the following*
18 *substances that will cause an exceedance of water quality*
19 *objectives in the receiving water:*

20 (i) *Priority toxic pollutants identified pursuant to Section 307*
21 *of the Clean Water Act (33 U.S.C. Sec. 1317).*

22 (ii) *Chemicals listed pursuant to Section 25249.8 of the Health*
23 *and Safety Code.*

24 (E) Does not include any pollutant for which a total maximum
25 daily load has been prepared or is required to be established
26 pursuant to subsection (d) of Section 303 of the Clean Water Act
27 (33 U.S.C. Sec. 1313(d)) for the water body at issue.

28 (2) Waivers for specific types of discharges may not exceed
29 five years in duration, but may be renewed by the state board or a
30 regional board. The waiver shall be conditional and may be
31 terminated at any time by the state board or a regional board.
32 ~~Within 90 days of receiving notice by any interested person or~~
33 ~~organization demonstrating that a discharge or type of discharge~~
34 ~~for which a waiver has been issued no longer meets one or more~~
35 ~~of the requirements of paragraph (1), the state board or regional~~
36 ~~board shall review that notice and terminate the waiver for that~~
37 ~~discharge or type of discharge if the weight of the evidence~~
38 ~~demonstrates that the discharge or type of discharge is not meeting~~
39 ~~all of those requirements. The conditions of the waiver shall The~~

1 *conditions of the waiver shall* include, but are not limited to, both
2 of the following:

3 (A) The payment of an annual fee established by the
4 appropriate regional board to cover the cost of administering the
5 waiver.

6 (B) The performance of monitoring on a quarterly basis for at
7 least one year to verify the constituents of the discharge and the
8 adequacy of the waiver's conditions, and, thereafter, the
9 performance of that monitoring at least once every two years.

10 (b) (1) A waiver in effect on January 1, 2000, shall remain
11 valid until January 1, 2003, unless the regional board terminates
12 that waiver prior to that date. All waivers that were valid on
13 January 1, 2000, and granted an extension until January 1, 2003,
14 and not otherwise terminated, may be renewed by a regional board
15 in five-year increments.

16 (2) Notwithstanding paragraph (1), a waiver for an onsite
17 sewage treatment system that is in effect on January 1, 2002, shall
18 remain valid until June 30, 2004, unless the regional board
19 terminates the waiver prior to that date. Any waiver for onsite
20 sewage treatment systems adopted or renewed after June 30, 2004,
21 shall be consistent with the applicable regulations or standards for
22 onsite sewage treatment systems adopted or retained in accordance
23 with Section 13291.

24 (c) Upon notification of the appropriate regional board of the
25 discharge or proposed discharge, except as provided in subdivision
26 (d), the provisions of subdivisions (a) and (c) of Section 13260,
27 subdivision (a) of Section 13263, and subdivision (a) of Section
28 13264 do not apply to a discharge resulting from any of the
29 following emergency activities:

30 (1) Immediate emergency work necessary to protect life or
31 property or immediate emergency repairs to public service
32 facilities necessary to maintain service as a result of a disaster in
33 a disaster-stricken area in which a state of emergency has been
34 proclaimed by the Governor pursuant to Chapter 7 (commencing
35 with Section 8550) of Division 1 of Title 2 of the Government
36 Code.

37 (2) Emergency projects undertaken, carried out, or approved
38 by a public agency to maintain, repair, or restore an existing
39 highway, as defined in Section 360 of the Vehicle Code, except for
40 a highway designated as an official state scenic highway pursuant

1 to Section 262 of the Streets and Highways Code, within the
2 existing right-of-way of the highway, damaged as a result of fire,
3 flood, storm, earthquake, land subsidence, gradual earth
4 movement, or landslide within one year of the damage. This
5 paragraph does not exempt from this section any project
6 undertaken, carried out, or approved by a public agency to expand
7 or widen a highway damaged by fire, flood, storm, earthquake,
8 land subsidence, gradual earth movement, or landslide.

9 (d) Subdivision (c) is not a limitation of the authority of a
10 regional board under subdivision (a) to determine that any
11 provision of this division shall not be waived or to establish
12 conditions of a waiver. Subdivision (c) shall not apply to the extent
13 that it is inconsistent with any waiver or other order or prohibition
14 issued under this division.

15 (e) The regional boards and the state board shall require
16 compliance with the conditions pursuant to which waivers are
17 granted under this section.

18 (f) Prior to renewing any waiver for a specific type of discharge
19 established under this section, the state board or a regional board
20 shall review the terms of the waiver policy at a public hearing. At
21 the hearing, the state board or a regional board shall determine
22 whether the discharge for which the waiver policy was established
23 should be subject to general or individual waste discharge
24 requirements.

25 ~~SEC. 6.—~~

26 *SEC. 5.* No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution because
28 the only costs that may be incurred by a local agency or school
29 district will be incurred because this act creates a new crime or
30 infraction, eliminates a crime or infraction, or changes the penalty
31 for a crime or infraction, within the meaning of Section 17556 of
32 the Government Code, or changes the definition of a crime within
33 the meaning of Section 6 of Article XIII B of the California
34 Constitution.

